In the High Court of Judicature at Madras

Date : 05.04.2007

Coram :

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Writ Appeal No: 209 of 2004

Tmtk. Thangammal ... Appellant

-vs-

1.Government of Tamil Nadu,
rep. by its Secretary,
Home (Cinema-II) Department,
Fort St. George,
Chennai.9.

2.The Collector,
Madurai District,
Madurai. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Appeal against the order dated 22.1.2004 passed in W.P.No.698 of 2004 to call for the records from the file of the Ist respondent herein in proceedings G.O.D.No.1 Home (Cinema - II) Department dated 01.01.2004.

For petitioner : Mr. B.S. Gnanadesikan

For respondents : Mr. P. Subramanian Government Advocate

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JUDGMENT

(Judgment of the Court was delivered by
P. SATHASIVAM,J.,)

The above writ appeal is directed against the order of the learned Single Judge dated 22.1.2004 made in W.P.No. 698 of 2004 in and by which, the learned Judge dismissed the writ petition with an observation.

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2. For convenience, we shall refer the parties as arrayed in the writ petition.

3. According to the petitioner, she had taken a Hall, which was owned by victoria Edward Hall, a society registered under the Societies Registration Act for the purpose of running a cinema theatre and the said society executed a lease deed in favour of the petitioner on 1.2.1989 for a period of 12 years. On the basis of the lease deed , an application was filed to the Licensing Authority, namely, the Collector, Madurai/ the second respondent to grant C-Form licence and the same was granted on 21.8.1989. After expiry of 12 years period, a dispute arose between the Victoria Edward Hall and the petitioner but subsequently the same was settled. A fresh lease deed was executed on 25.6.2001 for a period of nine years and renewal was granted by the second respondent and the theatre was running on the basis of the said renewal.

4. One Mr.M.Sankarapandian, who has no right whatsoever under the Tamil Nadu Cinematograph Act or Rules to raise any objection, has filed objections before the Collector, Madurai on 12.7.2001 and 13.7.2001 objecting the grant of C-Form licence to the petitioner. The writ petition filed by the said Sandkarapandian in W.P.No. 12350 of 2001, which was referred to by the second respondent in his order dated 18.7.2001, was subsequently dismissed by the learned Judge of this Court on 8.8.2001. After dismissal of the writ petition, by proceedings dated 16.8.2001, the second respondent cancelled the orders dated 15.7.2001 and 18.7.2001. The Objector viz., Sankarapandian filed an appeal against the order passed by the second respondent on 16.8.2001 raising various objections before the Appellate Authority. The Appellate Authority found that while renewing the C-Form licence, some conditions have to be fulfilled regarding the Rules 55, 80, 81, 96(1) and (3) and therefore, directed the second respondent to satisfy himself whether licensee has complied with Rule 96 of the Tamil Nadu Cinemas Regulation Rules and pass appropriate orders within six weeks from the date of the order. After the said order, the Licensing Authority renewed the licence on 25.1.2002 upto 31.3.2003 which was challenged by the said Sankarapandian again before the Appellate Authority. The Appellate Authority, by order dated 21.5.2002 set aside the renewal and allowed the appeal against which, a revision was filed. The Licensing Authority after getting report from all the authorities concerned, renewed C-Form licence. Again, the said Sankarapandian filed an appeal before the Appellate Authority questioning the renewal made by the Licensing Authority. By order dated 27.9.2002, the Appellate Authority confirmed the order of the second respondent and dismissed the appeal filed by the Objector viz., M. Sankarapandian. Again, the said objector filed revision before the first Respondent and the first respondent, in his order dated 1.1.2004, held that all the objections of the objector/ revision petitioner are not sustainable however, set aside the order of the Licensing Authority on the technical plea that before renewal, the Licensing Authority ought to have cancelled the earlier order

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of cancellation. Questioning the said direction/ order, the petitioner filed W.P.No. 698 of 2004.

5. The learned Judge of this Court, after hearing the learned counsel for the petitioner as well as the Special Government Pleader for respondents, observed that the petitioner can very well face the remand order before the Licensing Authority and till final decision being taken, the petitioner is free to seek for E-permit and with the said observation, dismissed the writ petition. Questioning the said order, the petitioner has filed the present writ appeal.

6. Heard Mr. B.S. Gnanadesigan, learned counsel for the appellant as well as the learned Government Advocate for the respondents.

7. In view of the narration of the facts in the earlier paragraphs, there is no need to refer all the factual aspects once again. However, learned counsel for the appellant rightly pointed out the conclusion arrived at by the revisional authority viz., Government of Tamil Nadu with regard to merits of the objections raised by the objector viz., Sankarapandian. The conclusions arrived at In para-5 of the order of Government in G.O.D.No.1, Home (Cinema-II) Department, dated 1.1.2004, are as follows:-

> " The Government have examined the objections of the revision petitioner with relevant records and with reference to relevant provisions of rules. The above objections have already been considered by the Licensing Authority and the Appellate Authority. The Senior Engineer, Public Works Department issued the structural soundness certificate. The Revenue Divisional Officer, Madurai inspected the theatre and reported that the rules 55(i), 55(ii) of Part-IV and Rule 80 of Part-V of the Tamil Nadu Cinema (Regulation) Rules, 1957 were complied with. The Collector himself inspected the theatre on 25.6.2002 and stated that the licensee complied with the deficiencies pointed out by the Appellate Authority in his proceedings dated 21.5.2002. As such the objections of the Revision Petitioner are not sustainable. "

8. It is clear that on receipt of the objections of the Objector/ revision petitioner viz., Sankarapandian, a report was called for from the Licensing Authority, Senior Engineer, Public Works Department, and Revenue Divisional Officer, Madurai. It further shows that apart from the above said officers, the Collector himself inspected the theatre on 25.6.2002 and found that the licensee complied with the deficiencies pointed out by the Appellate Authority in his proceedings dated 21.5.2002. Based on the above said materials, the Government has ultimately concluded that the objections of the revision petitioner are not sustainable. However, having arrived at such conclusions based on the report of the authorities concerned, on the technical plea, remitted the matter to the Licensing Authority, viz., the District Collector,

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Madurai with a direction to dispose of the application of the Licensee Tmt. Thangammal, dated 30.5.2002 in accordance with law as directed by this Court in the order dated 5.6.2002. As rightly pointed by the learned counsel for the appellant, when the Revisional Authority - Government itself satisfied that the deficiencies pointed out have been complied with/ rectified and there is no merit in the objections of the revision petitioner/ objector, we are of the view that there is no need for issuing further direction for cancelling the earlier cancellation order. The factual conclusions based on the report of the various authorities have not been taken note of by the learned single Judge while passing the order in the writ petition, though the petitioner was permitted to seek for E-permit pending decision on the basis of the remand order of the Government. We are of the view that in view of the categorical factual conclusions arrived at by the revisional authority - Government, the direction with regard to the order canceling the earlier cancellation order is not warranted. The said direction as well as the order of the learned single Judge cannot be sustained. Accordingly, the same are set aside.

9. Learned counsel for the appellant submitted that based on the direction of this Court, all along E-permit was issued in favour of the appellant and by virtue of the same, the theatre is being run by the appellant. It is also brought to our notice that even now, the appellant is running the theatre on the basis of the E-permit issued by the Licensing authority.

10. In view of the same, the second respondent - viz., The Collector, Madurai Distrisct is directed to consider and pass orders on the renewal application of the appellant dated 1.4.2007 on merits and in accordance with law without reference to any other technical objections including the fact that the appellant has not filed the application for the last three years and running the theatre only on the basis of the E-permit, within a period of four weeks from the date of receipt of copy of this order. Till final decision is being taken by the District Collector, Madurai, as directed above, the appellant is entitled to similar E-permit to run the theatre. This writ appeal is allowed on the above terms. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary,
Government of Tamil Nadu,
Home (Cinema-II) Department,
Fort St. George,
Chennai.9.

2. The Collector,
Madurai District,
Madurai.

1 cc To Mr.B.S.Gnanadesikan, Advocate, SR.21881.
1 cc To The Government Pleader, SR.22098.

W.A.No. 209 of 2004

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